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PTO/SB/21 (08-03)

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| | | | |
|---|----------------------|------------------------|--------|
| TRANSMITTAL FORM (to be used for all correspondence after initial filing) | Application Number | 10/715,243 | |
| | Filing Date | 11/18/2003 | |
| | First Named Inventor | Mark N. Heflin | |
| | Art Unit | 3644 | |
| | Examiner Name | Dinh, Tien Quang | |
| Total Number of Pages in This Submission | 3 | Attorney Docket Number | 991316 |

| ENCLOSURES (Check all that apply) | | |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance communication to Group |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Reply | <input type="checkbox"/> Petition | <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Power of Attorney, Revocation | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Terminal Disclaimer | Petition Under Rule 1.181(a)(3) and MPEP 706.07(c) |
| <input type="checkbox"/> Information Disclosure Statement | <input type="checkbox"/> Request for Refund | To Withdraw Final Rejection |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> CD, Number of CD(s) _____ | |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application | Remarks | |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 | | |

| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | |
|--|----------------------|
| Firm or Individual name | Alan P. Klein |
| Signature | <i>Alan P. Klein</i> |
| Date | 7/13/2005 |

| CERTIFICATE OF TRANSMISSION/MAILING | | | |
|---|------------------------|------|-----------|
| I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below. | | | |
| Typed or printed name | Diane R. Winter | | |
| Signature | <i>Diane R. Winter</i> | Date | 7/13/2005 |

This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.
Small Entity payments must be supported by a small entity statement,
otherwise large entity fees must be paid. See Forms PTO/SB/09-12.
See 37 C.F.R. §§ 1.27 and 1.28.

TOTAL AMOUNT OF PAYMENT (\$): 130

Complete if Known

| | |
|----------------------|------------------|
| Application Number | 10/715,243 |
| Filing Date | 11/18/2003 |
| First Named Inventor | Mark N. Heflin |
| Examiner Name | Dinh, Tien Quang |
| Group / Art Unit | 3644 |
| Attorney Docket No. | 991316 |

METHOD OF PAYMENT (check one)

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayments to:

Deposit Account Number: 50-1340

Deposit Account Name:

☒ Charge Any Additional Fee Required Under 37 CFR §§ 1.16 and 1.17

2. ☐ Payment Enclosed:

☐ Check ☐ Money Order ☐ Other

FEE CALCULATION

1. BASIC FILING FEE

| Large Entity Fee Code | Small Entity Fee Code | Fee Description | Fee Paid |
|-----------------------|-----------------------|------------------------|----------|
| 101 690 | 201 345 | Utility filing fee | |
| 106 310 | 206 155 | Design filing fee | |
| 107 480 | 207 240 | Plant filing fee | |
| 108 690 | 208 345 | Reissue filing fee | |
| 114 150 | 214 75 | Provisional filing fee | |

SUBTOTAL (1) (\$):

2. EXTRA CLAIM FEES

| Total Claims | Extra Claims | Fee from below | Fee Paid |
|--------------------|--------------|----------------|----------|
| Independent Claims | -20** = | X | |
| Multiple Dependent | -3** = | X | |

**or number previously paid, if greater; For Reissues, see below

| Large Entity Fee Code | Small Entity Fee Code | Fee Description | Fee Paid |
|-----------------------|-----------------------|--|----------|
| 103 18 | 203 9 | Claims in excess of 20 | |
| 102 78 | 202 39 | Independent claims in excess of 3 | |
| 104 260 | 204 130 | Multiple dependent claim, if not paid | |
| 109 78 | 209 39 | ** Reissue independent claims over original patent | |
| 110 18 | 210 9 | ** Reissue claims in excess of 20 and over original patent | |

SUBTOTAL (2) (\$):

FEE CALCULATION (continued)

3. ADDITIONAL FEES

| Large Entity Fee Code | Small Entity Fee Code | Fee Description | Fee Paid |
|-----------------------|-----------------------|--|----------|
| 105 130 | 205 65 | Surcharge - late filing fee or oath | |
| 127 50 | 227 25 | Surcharge - late provisional filing fee or cover sheet | |
| 139 130 | 139 130 | Non-English specification | |
| 147 2,520 | 147 2,520 | For filing a request for reexamination | |
| 112 920* | 112 920* | Requesting publication of SIR prior to Examiner action | |
| 113 1,840* | 113 1,840* | Requesting publication of SIR after Examiner action | |
| 115 110 | 215 55 | Extension for reply within first month | |
| 116 380 | 216 190 | Extension for reply within second month | |
| 117 870 | 217 435 | Extension for reply within third month | |
| 118 1,360 | 218 680 | Extension for reply within fourth month | |
| 128 1,850 | 228 925 | Extension for reply within fifth month | |
| 119 300 | 219 150 | Notice of Appeal | |
| 120 300 | 220 150 | Filing a brief in support of an appeal | |
| 121 260 | 221 130 | Request for oral hearing | |
| 138 1,510 | 138 1,510 | Petition to institute a public use proceeding | |
| 140 110 | 240 55 | Petition to revive - unavoidable | |
| 141 1,210 | 241 605 | Petition to revive - unintentional | |
| 142 1,210 | 242 605 | Utility issue fee (or reissue) | |
| 143 430 | 243 215 | Design issue fee | |
| 144 580 | 244 290 | Plant issue fee | |
| 122 130 | 122 130 | Petitions to the Commissioner | 130 |
| 123 50 | 123 50 | Petitions related to provisional applications | |
| 126 240 | 126 240 | Submission of Information Disclosure Stmt | |
| 581 40 | 581 40 | Recording each patent assignment per property (times number of properties) | |
| 146 690 | 246 345 | Filing a submission after final rejection (37 CFR § 1.129(a)) | |
| 149 690 | 249 345 | For each additional invention to be examined (37 CFR § 1.129(b)) | |

Other fee (specify):

Other fee (specify):

* Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$): 130

SUBMITTED BY

| | | | | | |
|-------------------|---------------|-----------------------------------|------------|-----------|--------------|
| Name (Print/Type) | Alan P. Klein | Registration No. (Attorney/Agent) | 26,926 | Telephone | 703-696-8113 |
| Signature | Alan P. Klein | Date | 07/13/2005 | | |

WARNING:

Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

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Army Case No. 991316

Patent

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application:
MARK N. HEFLIN
JAMES B. STEWART
SAMUEL L. KAESEMEYER
Serial No. 10/715,243
Filed: 11/18/2003
For: NON-PYROTECHNIC
REMOTE-CONTROLLED
PARACHUTE JETTISON DEVICE

Art Unit No. 3644
Examiner: Dinh, Tien Quang
Confirmation No. 4994

PETITION UNDER RULE 1.181(a)(3)
AND MPEP 706.07(c)
TO WITHDRAW FINAL REJECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Your petitioner hereby requests withdrawal of the finality of the Final Rejection dated 06/06/2005. There has been a proper request for consideration (under Rule 1.111) and a repeated action by the Examiner.

Remarks begin on page 2 of this paper.

07/18/2005 SHASSEN1 00000049 501340 10715243

01 FC:1464 130.00 DA

Application No. 10/715,243
Petition dated 07/13//2005
Reply to Office Action of 06/06/2005

REMARKS

Applicants request withdrawal of the finality of the Final Rejection dated 06/06/2005, in the above-entitled application.

The Final Rejection is premature. It was made in the second action although that action included a new ground of rejection neither necessitated by applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

Specifically, claims 1, and 6-13, were originally rejected as being unpatentable under 35 USC 103(a) over Underwood et al. in view of Kenzie.

Claims 1, and 6-13, have now been rejected on a new ground as being unpatentable under 35 USC 103(a) over Underwood et al. in view of Kenzie and Tillman.

Claims 1, and 6-13, have never been amended.

MPEP 706.07(a) clearly states that a second action on the merits in any application will not be made final where the examiner introduces a new ground of rejection neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p).

The reason for this is to leave no doubt among Examiners that they must state clearly and specifically any objections (the prime facie case) to patentability, and give the

applicant fair opportunity to meet those objections with evidence and argument. In re Oetiker, 24 USPQ 2d 1443, 1447 (Fed. Cir. 1992) (Plager, J., concurring).

For the foregoing reasons, it is submitted that the Final Rejection is premature, and withdrawal of the finality of the rejection is respectfully requested.

Respectfully submitted,

Mark N. Heflin
James B. Stewart
Samuel L. Kaesemeyer

A handwritten signature in cursive script, appearing to read "Alan P. Klein", is written over a horizontal line.

ALAN P. KLEIN
Attorney of record
Reg. No. 26,926

Phone: (703) 696-8113